

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
STATESVILLE DIVISION**

Civil Action No. 5:19-cv-0041-KDB-DCK

DANIEL DANFORD and HARRY)
HOUTMAN, individually and on behalf of)
all other similarly situated individuals,)

Plaintiffs,

v.

LOWE’S COMPANIES, INC. and)
LOWE’S HOME CENTERS, LLC,)

Defendants.

**DEFENDANTS’ PARTIAL MOTION TO
DISMISS PLAINTIFFS’ FIRST AMENDED
COLLECTIVE AND CLASS ACTION
COMPLAINT**

Defendants Lowe’s Companies, Inc. and Lowe’s Home Centers, LLC (together, “LOWE’S”) file this Partial Motion to Dismiss Plaintiffs’ First Amended Collective and Class Action Complaint (ECF No. 17) pursuant to Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6), and respectfully state as follows:

1. Counts II, III, IV, and V of the Plaintiffs’ First Amended Collective and Class Action Complaint (the “AMENDED COMPLAINT”) should be completely dismissed because Plaintiff Houtman, the only named plaintiff with standing to assert these claims under California law, is subject to an arbitration agreement and cannot litigate these claims.

2. The only remaining named plaintiff, Plaintiff Danford, lacks standing to pursue Counts II, III, IV, and V of the Amended Complaint on behalf of himself or the proposed Rule 23 class and does not plead the facts necessary to meet his burdens under *Bell Atl. Corp. v. Twombly*, 550 U.S. 544 (2007) and *Ashcroft v. Iqbal*, 556 U.S. 662 (2009).

3. Lowe's refers the Court to its Memorandum of Law in Support—which is filed contemporaneously herewith and incorporated in full for all purposes—for arguments, authorities, and exhibits being offered in support.

4. Consultation between counsel in accordance with Local Rule 7.1 is not required for this dispositive motion. LCR 7.1(b)(1).

PRAYER

WHEREFORE, Lowe's respectfully requests that this Court dismiss Counts II, III, IV, and V of the Amended Complaint in their entirety, and grant all other relief that Lowe's is entitled to at law or in equity.

This the 3rd day of July, 2019.

/s/ Paul J. Peralta
Paul J. Peralta, Esq.
N.C. State Bar No. 34622
Benjamin P. Fryer, Esq.
N.C. State Bar No. 39254
Scott M. Tyler, Esq.
N.C. State Bar No. 23300
Rachael M. Coe, Esq.
N.C. State Bar No. 53900
MOORE & VAN ALLEN PLLC
100 North Tryon Street, Suite 4700
Charlotte, NC 28202-4003
Phone: (704) 331-1024

Attorneys for Defendants

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing was electronically filed with the Clerk of Court using the Court's CM/ECF system, which will send notification of such filing to the following counsel of record:

James J. Mills, Esq.
BURNS, DAY, & PRESNELL, P.A.
2626 Glenwood Avenue, Suite 560
Raleigh, North Carolina 27608
Phone: (919) 782-1441
jmills@bdppa.com

Kevin J. Stoops, Esq.
Rod M. Johnston, Esq.
SOMMERS SCHWARTZ, P.C.
One Towne Square, 17th Floor
Southfield, Michigan 48076
Phone: (248) 355-0300
kstoops@sommerspc.com
rjohnson@sommerspc.com

This the 3rd day of July, 2019.

/s/ Paul J. Peralta
Paul J. Peralta, Esq.